



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

October 10, 1997

The Honorable Michael A. Sheppard
District Attorney, 24th Judicial District
307 North Gonzales
Cuero, Texas 77954

Letter Opinion No 97-091

Re: Whether Code of Criminal Procedure article 59.06 authorizes a district attorney and sheriff's department to agree to dispose of forfeited automobiles by sheriff's auction or whether such property must be disposed as surplus county property pursuant to Local Government Code section 263.152 (ID# 39656)

Dear Mr. Sheppard:

You ask about the proper disposition of automobiles forfeited pursuant to chapter 59 of the Code of Criminal Procedure, which provides for the seizure and forfeiture of property used in the commission of certain offenses. You believe that article 59.06 authorizes a district attorney and sheriff's department to agree to dispose of forfeited automobiles by sheriff's auction. Certain Refugio County officials, on the other hand, believe that forfeited automobiles must be disposed of as surplus county property pursuant to section 263.152 of the Local Government Code. We conclude that article 59.06 authorizes a district attorney and sheriff's department to agree to dispose of forfeited automobiles that have not been transferred to the sheriff's department for official use by sheriff's auction.

Article 59.06, which sets forth procedures governing the disposition of forfeited property, generally provides that

all forfeited property shall be administered by the attorney representing the state, acting as the agent of the state, in accordance with accepted accounting practices and with the provisions of any local agreement entered into between the attorney representing the state and law enforcement agencies. If a local agreement has not been executed, the property shall be sold on the 75th day after the date of the final judgment of forfeiture at public auction under the direction of the county sheriff, after notice of public auction as provided by law for other sheriff's sales.

Code Crim. Proc. art. 59.06(a); *see also id.* art. 59.01(1) (defining "attorney representing the state"), (5) (defining "law enforcement agency"). Article 59.06 also provides in subsection (b) that if a local agreement exists,

the attorney representing the state may transfer the property to law enforcement agencies to maintain, repair, use, and operate the property for official purposes if the property is free of any interest of an interest holder. . . . If the property is a motor vehicle subject to registration under the motor vehicle registration laws of this state, the agency receiving the forfeited vehicle is considered to be the purchaser and the certificate of title shall issue to the agency.

Id. art. 59.06(b).

Section 263.152 of the Local Government Code generally requires a commissioners court to sell surplus county property by competitive bid or auction. "Surplus property" means personal property that possesses some usefulness for the purpose for which it was intended, is not waste, is not currently needed by its owner, and is not required for the owner's foreseeable needs. *See* Local Gov't Code § 263.151.

You have submitted a copy of an addendum to a local agreement between your office and the Refugio County sheriff's department that authorizes the sheriff's department to sell forfeited vehicles "at a public auction under the Sheriff's direction, as agent for the [district attorney]." You construe the addendum to apply only to vehicles that are to be sold following forfeiture and that will not be used by the sheriff's department pursuant to article 59.06(b). Because this office does not construe contracts,¹ we accept this construction as correct. You assert that "vehicles forfeited but not used by the Sheriff, *i.e.* ones that are merely forfeited and sold, are not surplus property subject to [Local Government Code] Section 263.152 and may be sold at a Sheriff's sale at the Sheriff's direction, not at the direction of the Commissioners Court." You rely in part on Attorney General Opinion JM-1184.² Some county officials assert that forfeited automobiles must be sold as surplus property pursuant to Local Government Code section 263.152, relying on Attorney General Opinion JM-899.³

We believe that article 59.06(a) authorizes a district attorney and sheriff's department to agree to dispose of forfeited automobiles by sheriff's auction. Subsection (a) requires the attorney representing the state to administer forfeited property in accordance with any existing local agreement and specifies sheriff's auction as the method to dispose of property in the absence of a local agreement. The intent of subsection (a) is clearly to provide that the disposition of forfeited property will be governed by the terms of an existing local agreement in the first instance. Although subsection (a) specifies sheriff's auction as the fallback method, we see no reason why parties to a

¹*See* Attorney General Opinions DM-383 (1996) at 2 (interpretation of contract not appropriate function for opinion process), DM-192 (1992) at 10 ("This office, in the exercise of its authority to issue legal opinions, does not construe contracts."), JM-697 (1987) at 6 ("review of contracts is not an appropriate function for the opinion process").

²Attorney General Opinion JM-1184 (1990) at 4-5.

³Attorney General Opinion JM-899 (1989) at 5-6.

local agreement would be precluded from selecting sheriff's auction as the contractual disposal method.

We further note that forfeited automobiles, as a general matter, are forfeited to the state. *See* Code Crim. Proc. art. 59.06(f) ("A final judgment of forfeiture under this chapter perfects the *title of the state* to the property . . .") (emphasis added). For this reason, we do not believe that forfeited automobiles are subject to Local Government Code section 263.152. Section 263.152 refers to "county surplus property" and clearly applies only to property owned by a county. We do not believe that statute applies to state property that happens to be in the possession of a county.

We recognize that title to forfeited automobiles transferred to a sheriff's department for official use under subsection (b) of article 59.06 passes to the sheriff's department⁴ and that such property may arguably become county property subject to Local Government Code section 263.152. Because the local agreement at issue here does not govern the disposition of property transferred to the sheriff's department pursuant to subsection (b), however, we need not resolve the proper disposition of such property here.

Finally, we address the attorney general opinions cited in your letter. Attorney General Opinion JM-899 concluded that forfeited automobiles retained for official county use must be disposed of by the commissioners court as surplus county property. Attorney General Opinion JM-1184 overruled Attorney General Opinion JM-899, reasoning that property transferred to a county for official use merely delays the sale by sheriff's auction and concluding that "after the vehicle is no longer useful to the political subdivision for official purposes, it is to be sold at public auction under the direction of the county sheriff." These opinions are inapposite for two reasons. First, they address the disposition of property that has been transferred to a county for official use. Again, we do not address in this opinion the proper disposition of property transferred to the sheriff's department for official use pursuant to article 59.06 subsection (b). Furthermore, the opinions address statutes in effect prior to the substantive revision and incorporation of the forfeiture provisions into chapter 59 of the Criminal Code in 1989.⁵ Prior versions of the statute did not provide for local agreements, and we do not find the prior opinions' general analysis of the repealed provisions particularly relevant here.

⁴*See* Code Crim. Proc. art. 59.06(b) ("the agency receiving the forfeited vehicle is considered to be the purchaser and the certificate of title shall issue to the agency").

⁵Attorney General Opinion JM-899 addressed V.T.C.S. article 4476-15, sections 5.03 through 5.081, provisions which were repealed by the Seventy-first Legislature in 1989 and codified in the Health and Safety Code as part of a nonsubstantive revision of laws. *See* Act of May 18, 1989, 71st Leg., R.S., ch. 678, §§ 1, 13, 14, 1989 Tex. Gen. Laws 14, 21. Attorney General Opinion JM-1184 addressed the Health and Safety Code provisions. Those provisions were repealed, revised, and incorporated into the Code of Criminal Procedure during the first called session of the Seventy-first Legislature. *See* Act of July 19, 1989, 71st Leg., 1st C.S., ch. 12, §§ 1, 6, 1989 Tex. Gen. Laws 2230, 3165.

S U M M A R Y

Code of Criminal Procedure article 59.06 authorizes a district attorney and sheriff's department to agree to dispose of forfeited automobiles that have not been transferred to the sheriff's department for official use as provided by article 59.06(b) by sheriff's auction.

Yours very truly,

A handwritten signature in black ink, appearing to read "Mary R. Crouter". The signature is fluid and cursive, with a large, stylized "M" and "C".

Mary R. Crouter
Assistant Attorney General
Opinion Committee